

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THOMAS BLINDT)	
Claimant)	
VS.)	
)	Docket No. 213,959
MIDWEST DRYWALL)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appealed Administrative Law Judge John D. Clark's June 24, 1998, Award. The Appeals Board heard oral argument by telephone conference on February 3, 1999.

APPEARANCES

Claimant appeared by his attorney, Robert R. Lee of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Douglas D. Johnson of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the award.

ISSUES

The Administrative Law Judge awarded claimant a 62 percent work disability. He found claimant originally injured his right forearm at work and then his continued work activities caused additional injuries to his right shoulder, right wrist, and neck.

Respondent contends claimant failed to prove he suffered a whole body injury. Therefore, claimant is limited to a scheduled injury to his right arm as provided for in K.S.A. 44-510d(a)(13).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds the Award should be affirmed.

The Administrative Law Judge found claimant had suffered a whole body injury instead of a scheduled right arm injury based on the medical opinions expressed by Blake C. Veenis, M.D. The doctor was appointed by the Administrative Law Judge to perform an independent medical examination of claimant. Dr. Veenis diagnosed claimant with a right elbow contusion and pain directly related to an accident claimant had at work in November 1995 when he bumped his right elbow and right lower arm while taking down scaffolding. Dr. Veenis opined that after this right arm injury, claimant continued to perform his repetitive activities at work but with different body mechanics because of his painful right arm injury. Those different body mechanics then caused additional problems of right epicondylitis, right carpal tunnel syndrome, right shoulder rotator cuff tendinitis, and myofascial pain of the cervicothoracic junction or neck. The doctor further testified that the myofascial pain in the neck was related to the shoulder pain caused by abnormal posturing. Dr. Veenis assigned an 11 percent whole body permanent functional impairment rating to claimant right upper extremity and a 1 percent permanent partial whole body impairment rating for the myofascial pain in the neck. Those two impairment ratings combined for a 12 percent whole body impairment.

The respondent argues that referred pain from a scheduled arm injury resulting in permanent impairment to other parts of the injured workers body does not result in a whole body impairment. Respondent cites the case of Riggan v. Coleman Company, 166 Kan. 234, 200 P.2d 271 (1948), where the Kansas Supreme Court held that referred pain from a scheduled arm injury was not compensable as a whole body injury.

However, the Riggan case was overruled in 1986 by Bryant v. Excel Corp., 239 Kan. 688, 722 P.2d 579. In Bryant, the Kansas Supreme Court held it is the situs of the resulting disability and not the situs of the trauma which determines the workers compensation benefits in this state. Here, the trauma caused injury to claimant's right arm and shoulder which then resulted in additional permanent impairment to claimant's neck.

Furthermore, the Appeals Board agrees with the Administrative Law Judge's analysis of the evidence as set forth in the Award. The Appeals Board finds the Administrative Law Judge's Award sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order.

Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own with one exception. The Appeals Board does not agree with the Administrative Law Judge's finding that claimant would have a 100 percent wage loss if claimant's social security disability had been based solely on his work related injury and other nonwork-related physical problems had not contributed to him qualifying for social security disability benefits. A determination that an injured worker qualifies for social security disability benefits is not relevant in determining an injured worker's disability under the Worker Compensation Act.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's June 24, 1998, Award, should be, and is hereby affirmed.

All other orders contained in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Douglas D. Johnson, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director